



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB879]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries and Ecosystem Monitoring and Research Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the California Department of Fish and Wildlife (CDFW), on behalf of the Interagency Ecological Program (IEP), for authorization to take marine mammals incidental to conducting fisheries and ecosystem monitoring and research activities within the San Francisco Bay-Delta Estuary, CA, over the course of five years. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of CDFW's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on CDFW's application and request.

DATES: Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be sent to ITP.Laws@noaa.gov.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

Electronic copies of CDFW's application and separate monitoring plan may be obtained online at: www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities. In case of problems accessing these documents, please call the contact listed above.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence

uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On February 11, 2022, NMFS received an adequate and complete application from CDFW requesting authorization for take of marine mammals incidental to IEP monitoring and research activities in the San Francisco Bay-Delta Estuary, California. The requested regulations would be valid for 5 years. The proposed action includes the use of fishing research gear (*e.g.*, nets, trawls, setlines, and fykes) that may result in marine mammal interactions resulting in Level A harassment, serious injury or mortality. Therefore, CDFW requests authorization to incidentally take marine mammals.

Specified Activities

The IEP consists of multiple State and Federal agencies operating in the San Francisco Bay and Sacramento-San Joaquin Delta. The IEP has been conducting cooperative ecological investigations since the 1970s. IEP agencies partner with non-

governmental organizations that work together to develop a better understanding of the Bay-Delta estuary's fish and wildlife, water quality, hydrodynamics and impacts of human activities on ecology. IEP's key studies specifically address the effects of the State Water Project and Federal Central Valley Project water project operations on the Delta and San Francisco Estuary. Many of the surveys monitor abundance and distribution of fish so to reduce entrainment risk at the water project export facilities in the south Delta.

IEP fish monitoring studies include use of various gears including midwater, otter, and Kodiak trawls (trawls), gill and trammel nets, purse seines and Lampara nets (nets), setlines and longlines (setlines), and hoop and fyke traps (fykes) that could result in incidental take via entanglement by net mesh, entrapment by fyke, or hooking by setlines. IEP studies also use a variety of other gears, such as backpack or boat mounted electrofishers, larval fish trawl nets, zooplankton nets, water samplers and instrumentation (acoustic receivers, water quality sondes, etc.) that are not expected to result in take of marine mammals.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning CDFW's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by CDFW, if appropriate.

Dated: March 8, 2022.

Kimberly Damon-Randall,

Director,

Office of Protected Resources,

National Marine Fisheries Service.